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5                   UNITED STATES DISTRICT COURT  
6                   WESTERN DISTRICT OF WASHINGTON  
7                   AT TACOMA

8                   MATTHEW HOPKINS,

9                   Plaintiff,

10                  v.

11                  WASHINGTON STATE SPECIAL  
12                  COMMITMENT CENTER CHIEF  
13                  MEDICAL DIRECTOR, DR. LESLIE  
14                  SZIEBERT, et al.,

15                  Defendants.

16                  CASE NO. C15-5554 BHS

17                  ORDER ADOPTING REPORT  
18                  AND RECOMMENDATION

19                  This matter comes before the Court on the Report and Recommendation (“R&R”)  
20                  of the Honorable David W. Christel, United States Magistrate Judge (Dkt. 30), and  
21                  Plaintiff Matthew Hopkins’s (“Hopkins”) objections to the R&R (Dkt. 32).

22                  On August 17, 2015, Hopkins filed a 42 U.S.C. § 1983 complaint against  
23                  Defendants Leslie Sziebert and Galina Dixon (collectively “Defendants”). Dkt. 6  
24                  (“Comp.”). Hopkins is a civilly-committed detainee at the Washington State Special  
25                  Commitment Center (“SCC”). *Id.* ¶¶ 3.1, 8.2. Hopkins alleges Defendants denied him

1 adequate medical care in violation of his Eighth and Fourteenth Amendment rights. *Id.*

2 ¶¶ 6.2–8.6.

3 On January 28, 2016, Galina Dixon (“Dixon”) moved to dismiss the claims against  
4 her, arguing Hopkins had failed to state a claim under Federal Rule of Civil Procedure  
5 12(b)(6). Dkt. 23. On April 19, 2016, Judge Christel recommending granting Dixon’s  
6 motion because Hopkins failed to allege facts showing that Dixon personally participated  
7 in a violation of Hopkins’s constitutional rights or that Dixon’s conduct violated the  
8 Fourteenth Amendment. Dkt. 30 at 12–14. Judge Christel also recommended granting  
9 Hopkins leave to amend his complaint. *Id.* at 14. On May 11, 2016, Hopkins filed  
10 objections. Dkt. 32. Dixon did not file a response.

11 The dismissal of claims with leave to amend is a non-dispositive matter.

12 *McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991). Hopkins’s objections are  
13 therefore governed by Federal Rule of Civil Procedure 72(a). Under Rule 72(a), the  
14 Court “must consider timely objections and modify or set aside any part of the order that  
15 is clearly erroneous or is contrary to law.” Fed. R. Civ. P. 72(a).

16 Hopkins objects to Judge Christel’s conclusion that Hopkins failed to allege  
17 sufficient facts demonstrating Dixon’s personal participation. Dkt. 32 at 2. Judge  
18 Christel’s finding with respect to personal participation is not clearly erroneous or  
19 contrary to law. *See Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989) (“Liability under  
20 section 1983 arises only upon a showing of personal participation by the defendant.”).  
21 Although Hopkins makes several allegations regarding Dixon’s participation in his  
22 briefing, Dkt. 32 at 2–3, these allegations were not included in his complaint and

1 therefore should not be considered on a motion to dismiss, *see Lee v. City of Los Angeles*,  
2 250 F.3d 668, 688 (9th Cir. 2001) (“As a general rule, a district court may not consider  
3 any material beyond the pleadings in ruling on a Rule 12(b)(6) motion.” (internal  
4 quotation marks omitted)). Hopkins, however, will have the opportunity to amend his  
5 complaint to include these allegations and to cure the additional deficiencies highlighted  
6 in the R&R.

7 Therefore, the Court having considered the R&R, Hopkins’s objections, and the  
8 remaining record, does hereby find and order as follows:

- 9 (1) The R&R is **ADOPTED**; and  
10 (2) This case is **RE-REFERRED** for further proceedings.

11 Dated this 17<sup>th</sup> day of June, 2016.

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BENJAMIN H. SETTLE  
United States District Judge